Filed 6/1/11 In re Henry CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re TRESIA HENRY, on Habeas Corpus.	B228323 (Los Angeles County Super. Ct. No. BH006882)

APPEAL from an order of the Superior Court of Los Angeles County. Peter P. Espinoza, Judge. Affirmed.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Phillip Lindsay, Linnea D. Piazza, Kathleen R. Walton and Michael Rhoads, Deputy Attorneys General, for Appellant.

Heidi L. Rummel and Michael J. Brennan for Respondent.

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After serving 24 years in prison on a sentence of 17 years to life for second degree murder, respondent Tresia Henry was granted release on parole by the Board of Parole Hearings (Board). On July 16, 2009, then-Governor Arnold Schwarzenegger (Governor) issued an order, pursuant to Penal Code section 3041.2, reversing the Board's parole decision. The trial court, relying on *In re Lawrence* (2008) 44 Cal.4th 1181 (*Lawrence*), granted Henry's subsequent petition for a writ of habeas corpus, finding the Governor's reversal order was not supported by evidence of Henry's current dangerousness. The Governor appeals, contending the trial court exceeded its authority by reweighing the evidence and substituting its judgment for that of the Governor's on the issue of Henry's suitability for parole.[1] We conclude the trial court applied the correct standard of review, as enunciated in *Lawrence*, and properly discharged its duties in granting Henry's petition. We therefore affirm.

BACKGROUND

In 1984, Henry was 24 years old and had been addicted to alcohol and drugs for several years. As a child, Henry's mother had been incarcerated, and she was raised by her grandparents. During those years, she was molested by boyfriends of an older half sister.

One summer night in 1984, Henry was out of money and unable to sell personal property or borrow from friends and family to buy drugs. She was desperate for a "fix" and decided to steal money from her landlady. While under the influence of alcohol, marijuana and cocaine, and armed with a handgun belonging to her husband, Henry entered the home of her landlady, Vivian Wormely. Surprised by Ms. Wormely being

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[1] Initially, the Governor also raised the argument that the trial court's remedy of reinstating the Board's order, instead of remanding to the Governor for reconsideration, was improper. However, in his reply brief, the Governor withdrew this argument, acknowledging the authority supporting the propriety of the trial court's remedy. (See *In re Dannenberg* (2009) 173 Cal.App.4th 237, 256-257; accord, *In re Masoner* (2009) 179 Cal.App.4th 1531, 1540.)

home, she panicked and shot her twice in the stomach, then fled. Ms. Wormely, 68 years old, died of the gunshot wounds.

For two months, the police were unable to solve Ms. Wormely's murder. The police contacted Henry to interview her about the incident. She denied any knowledge of, or responsibility for, the crime. But the next day, Henry voluntarily contacted the police and admitted she had shot Ms. Wormely. After some time in custody awaiting trial, Henry pled guilty to the charges of second degree murder (Pen. Code, § 187) and use of a firearm during commission of a felony (§ 12022.5). She was sentenced to 17 years to life in state prison.

Henry was transferred to the California Institution for Women (CIW). Within a year, Henry's custody status was reduced to Medium A, where it has remained. Throughout her imprisonment, Henry has remained free of serious discipline, incurring only a handful of counseling reports for administrative violations, primarily for being tardy in reporting for work assignments. Henry has sought out new educational and vocational opportunities, earning a general equivalency degree, an associate degree in paralegal studies, an associate degree in theology, and a bachelor's degree in Christian education. She is presently pursuing further studies through Loyola Marymount University and a masters degree in theology from Christian Leadership University. Henry has also obtained additional marketable vocational skills as a data processor and sewing machine operator.

In psychological evaluations dating back to 1999, Henry has been consistently assessed as having no personality disorders or mental health issues and as being a low risk for violence or recidivism. All of the evaluators recounted Henry's commitment to, and enthusiasm for, her sobriety and self-improvement. Henry regularly attends rehabilitation meetings through AA, NA, Al-Anon, and Christian 12-step. She has completed certificate courses in anger management, The 7 Habits of Highly Effective People, Compass life skills class, substance abuse counseling and other similar courses. The evaluations also uniformly reported that Henry expressed sympathy towards her

victim, whom she described as a kind woman, even in the early years of her rehabilitation when Henry had not yet accepted full responsibility for her crime and claimed a lack of recall of the specific circumstances of the murder she committed.

The 2005 psychological evaluation stated Henry displayed genuine remorse and accepted her responsibility for the crime. It further noted there was "unanimous agreement" among her evaluators that Henry did not pose a risk to others, so long as she remains committed to sobriety. The report outlines Henry's "favorable risk profile" based on several protective factors against recidivism, such as her maturation and development of marketable skills, her lack of mental health issues and resolute commitment to sobriety, the passage of time, and a broad network of support. These opinions were repeated in the 2009 evaluation.

Henry has been a regular and reliable volunteer worker at CIW. Both the Board and her evaluators acknowledged an extensive number of laudatory reports and letters from correctional staff, prison volunteers, and Henry's extended "church family," praising Henry's work ethic, courteous demeanor, consideration of others and willingness to volunteer in a variety of capacities at CIW, including directing the choir, mentoring younger inmates and facilitating the Christian 12-step program.

Henry's minimum eligible parole date was January 20, 1996. She first appeared before the Board in 1995 and was found not suitable for parole at that time. Henry appeared before the Board several more times, each time resulting in a denial, notwithstanding many positive comments from the Board regarding Henry's postconviction conduct. Following the 2006 denial, Henry filed a petition for writ of habeas corpus in the trial court, case No. BH005128. Henry's petition was granted on December 19, 2008, and the Board was ordered to conduct another parole review hearing within 90 days.

In February 2009, a new parole hearing was conducted. After testimony from Henry, consideration of the record and updated reports, and argument from Henry's counsel and the deputy district attorney, the Board orally announced its decision finding

Henry suitable for parole. Thereafter, the Governor exercised his statutory authority to review the record of the proceedings de novo. (Pen. Code, § 3041.2.) On July 16, 2009, the Governor issued his decision reversing the Board, stating: "The gravity of the crime supports my decision, but I am particularly concerned by the evidence that Henry still minimizes her prior criminal conduct and has not accepted full responsibility for her offenses, that she is either unable or unwilling to conform her conduct to society's rules, that she does not have sufficient insight into her substance abuse problem or the difficulties that she would face on parole, and that she has not developed the ability to maintain stable relationships. This evidence indicates to me that Henry still poses a risk of recidivism and violence and that her release from prison at this time would pose an unreasonable risk to public safety."

Henry challenged the Governor's reversal by filing another petition for a writ of habeas corpus in the trial court. On September 30, 2010, the court granted Henry's petition, concluding "the Governor's reversal is not supported by some evidence in the record that [Henry] is currently dangerous." The court ordered the Board's decision reinstated and that Henry be released forthwith pursuant to the conditions set forth in the Board's February 19, 2009 parole release order.

The Governor timely appealed and immediately filed a petition for a writ of supersedeas. We granted a stay of the trial court's order pending further order of this court.

DISCUSSION

Pursuant to Penal Code sections 3040 and 5075 et seq., the Board is the agency generally authorized to grant parole and set parole release dates. Article V, section 8 of the California Constitution vests the Governor with the authority to review those parole decisions.[2] Both the Board and the Governor enjoy substantial discretion in exercising these functions. (*Lawrence*, *supra*, 44 Cal.4th at p. 1204.)

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[2] Article V, section 8, subdivision (b) of the California Constitution provides: "No decision of the parole authority of this state with respect to the granting, denial,

Where, as here, the trial court's habeas order concerning a parole decision by the Governor is based solely on documentary evidence, we independently review the record to determine whether there is some evidence to support the decision. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 676-677.) The Supreme Court has explained that while the "standard is unquestionably deferential, [it] certainly is not toothless, and '*due consideration' of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness*." (*Lawrence*, *supra*, 44 Cal.4th at p. 1210, italics added.) Resolution of any evidentiary conflicts and the weight accorded to such evidence are matters strictly within the discretionary authority of the Board and the Governor. (*In re Rosenkrantz, supra*, at p. 677.)

While the Board and the Governor are vested with discretion to balance the parole suitability factors, the exercise of that discretion must "reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious." (*In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 677.) The Supreme Court has cautioned: "[I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights. If simply pointing to the existence of an unsuitability factor and then acknowledging the existence of suitability factors were sufficient to establish that a parole decision was not arbitrary, and that it was supported by 'some evidence,' a reviewing court would be forced to affirm any denial-of-parole decision linked to the mere existence of certain facts in the record,

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revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action." (See also Pen. Code, § 3041.2.)

even if those facts have no bearing on the paramount statutory inquiry [of current dangerousness]. Such a standard, because it would leave potentially arbitrary decisions of the Board or the Governor intact, would be incompatible with our recognition that an inmate's right to due process 'cannot exist in any practical sense without a remedy against its abrogation.' [Citations.]" (*Lawrence, supra,* 44 Cal.4th at p. 1211.)

The statutory scheme contemplates release on parole to be the general rule, *not* the exception. Indeed, it mandates that parole normally "shall" be granted after expiration of the base term of imprisonment, unless unsuitably is established by reference to the relevant factors set forth in the California Code of Regulations, title 15, section 2402. (Pen. Code, § 3041, subd. (b) [the Board "shall set a release date"]; *Lawrence, supra*, 44 Cal.4th at p. 1204 [parole applicants have an expectation they will be granted parole unless unsuitability is established].) Any decision by the Board or the Governor must be focused on an assessment of the inmate's "current dangerousness." (*Lawrence,* at pp. 1211-1212.)

The Governor makes a de novo review of the record and must limit the review to an assessment of the same suitability factors considered by the Board. *"All relevant, reliable information . . . shall be considered* in determining suitability for parole." (Cal. Code Regs., tit. 15, § 2402, subd. (b), italics added.) The inmate's social history, past and present mental state, past criminal history and "any other information which bears on the prisoner's suitability for release" *shall* be considered. (*Ibid*.)

The enumerated factors tending to show unsuitability for parole are:
"(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include: [¶] (A) Multiple victims were attacked, injured or killed in the same or separate incidents. [¶] (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder. [¶] (C) The victim was abused, defiled or mutilated during or after the offense. [¶] (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. [¶] (E) The motive for the crime is inexplicable or very trivial in relation to the offense. [¶] (2) Previous Record of

Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age. [¶] (3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others. [¶] (4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim. [¶] (5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense. [¶] (6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail." (Cal. Code Regs., tit. 15, § 2402, subd. (c).)

The enumerated suitability factors are: "(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims. [¶] (2) Stable Social History. The prisoner has experienced reasonably stable relationships with others. [¶] (3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense. [¶] (4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time. [¶] (5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization. [¶] (6) Lack of Criminal History. The prisoner lacks any significant history of violent crime. [¶] (7) Age. The prisoner's present age reduces the probability of recidivism. [¶] (8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release." (Cal. Code Regs., tit. 15, § 2402, subd. (d).)

In granting Henry parole, the Board acknowledged the seriousness of her commitment offense, but highlighted her exemplary prison record, her rehabilitative efforts, and the fact that virtually all pertinent suitability factors weighed in favor of

release. In reversing that determination, the Governor concluded the unsuitability factors outweighed the positive aspects of her postconviction conduct, relying on (1) the gravity of her crime and her failure to take full responsibility; (2) her inability to conform to society's rules; (3) her lack of insight into her substance abuse problem; and (4) her inability to maintain stable relationships. As we explain below, we find the inferences drawn from the evidence by the Governor in order to support his conclusion that Henry is unsuitable for parole are unreasonable as a matter of law. (*In re Smith* (2009) 171 Cal.App.4th 1631, 1639.) We conclude no evidence supports a finding that Henry is currently dangerous.

1. Gravity of the Crime and Acceptance of Responsibility

The Governor found Henry was unsuitable for parole because the commitment offense was "especially heinous" given that the victim was elderly and vulnerable and the motive was "exceedingly trivial." The Governor also found Henry had not taken full responsibility for her crime. A denial-of-parole decision may be properly based on consideration of the circumstances surrounding the commitment offense, but only if those circumstances rationally lead to a conclusion the inmate still poses a current risk to public safety. "[T]he relevant inquiry for a reviewing court is not merely whether an inmate's crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are *probative* to the central issue of *current* dangerousness when considered in light of the full record before the Board or the Governor." (*Lawrence*, *supra*, 44 Cal.4th at p. 1221.)

Henry, under the influence of alcohol and drugs, shot her 68-year-old landlady, with whom she was friendly, and fled the scene. There is no doubt this was a reprehensible act, as Henry concedes, referring to her crime as "monstrous." However, the Governor's decision fails to articulate how the circumstances of that decades-old crime are probative of Henry's *current* dangerousness, other than to state, without evidentiary support, she has failed to accept full responsibility.

We conclude the gravity of Henry's commitment offense is insufficient to support the finding she currently presents a risk to public safety if released. By so finding, we

recognize the seriousness of Henry's conduct in taking an innocent life. However, the Legislature has enacted a statutory framework that categorizes different degrees of murder and proscribes different levels of punishment and entitlement to parole. "The statutory and regulatory mandate to normally grant parole to life prisoners who have committed murder means that, particularly after these prisoners have served their suggested base terms, the underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*Lawrence, supra,* 44 Cal.4th at pp. 1211, 1217-1221 [even especially heinous murder will not automatically establish unsuitability in perpetuity].)

There is no support in the record for the finding that Henry does not accept full responsibility for her crime. The Governor's conclusion is based on statements taken out of context. When read in context, the record can only reasonably be interpreted as supporting Henry's own assessment of her crime as serious and one for which she is sincerely remorseful. Henry voluntarily turned herself into police and pled guilty, despite strong pressure from her family to deny any involvement. In prison, she initially claimed difficulty remembering the incident and tried to shift blame, but later, she testified unequivocally that therapy helped her realize she was trying to repress her memories to avoid accepting what a shameful, horrendous crime she had committed.

In her 2007 testimony, Henry explained "for many, many years, I had not been totally forthcoming. And it was a lot of excuses. I don't want to say they were reasons because they weren't. They were excuses for me not to come to term, come to the reality, come to the full accountability of what I had done. And even to this day, even 23 years later, the guilt and the shame [are] still hard. When I'm out here sharing with the women, sometimes it's difficult to stand before hundreds of people and tell them about [my] journey because it wasn't pretty. [¶] And so I think in order for me to remain being whole, I have to be fully accountable whether it's not a pretty sight."

At the 2009 hearing, in addition to extensive testimony, Henry read a prepared statement to the Board: "In no way do I undermine my accountability and that is why I

did choose against my family and everybody else to turn myself in, because I needed to be responsible for this horrible act. Because of the shame and the guilt that soberly I could not face, I held back many raw emotions and I hated who I saw in the mirror. My act of violence took the life of an innocent person who didn't deserve it and my nonability to seek out help changed the course of many lives. And yet I've taken full responsibility for all the lives that have been destroyed by my hands. Mrs. [Wormely's] family, her friends, my family, myself, as well as the community. I am ready to give back to a society of which I took from in any way that I can . . . ."

Moreover, even if Henry only came to *full* acceptance of the gravity of her conduct in 2005, "[n]one of the suitability factors require that a prisoner's gains be maintained 'over an extended period of time[.]' [Citation.]" (*In re Barker* (2007) 151 Cal.App.4th 346, 368.) " 'There is no minimum time requirement. Rather, *acceptance of responsibility works in favor of release* "[*no*] *matter how longstanding or recent it is*," so long as the inmate "genuinely accepts responsibility . . . ." [Citation.]' [Citation.]" (*Id*. at pp. 368-369, italics added; see also *In re Lee* (2006) 143 Cal.App.4th 1400, 1414 [inmate's "lengthy journey to assuming full responsibility is no evidence that he continues to pose an unreasonable risk to public safety"].) The record unequivocally supports Henry's current remorse and acceptance of responsibility as genuine.

2. Ability to Conform to Society's Rules

During her entire period of incarceration, Henry has *never* been disciplined for a rules violation, a point the Governor acknowledges is "commendable." A rules violation report, also referred to as a "115", "documents misconduct that is 'believed to be a violation of law or is not minor in nature.' (Cal. Code Regs., tit. 15, § 3312, subd. (a)(3).)" (*In re Reed* (2009) 171 Cal.App.4th 1071, 1077.) There are no 115's in Henry's record.

The Governor points to 13 lesser, counseling chronology reports (also referred to as "128's" or "counseling chronos") made in the course of over two decades of incarceration as evidence of her inability to conform to society's rules. A counseling chrono documents incidents of "minor misconduct" (Cal. Code Regs., tit. 15, § 3312,

subd. (a)(2)) or administrative rules violations. (*Lawrence*, *supra*, 44 Cal.4th at p. 1197.) With the exception of an incident in 2008, all of Henry's counseling chronos pre-date 2004. The majority of these counseling chronos were for missing or being late for a work assignment. The defendant in *Lawrence* had a similar, minimal record of counseling chronos and the Supreme Court stated there that "[n]othing in the record supports a conclusion that [defendant] poses a threat to public safety because she was occasionally late to appointments or job assignments during her almost 24 years of incarceration." (*Lawrence*, at p. 1224.) The same analysis applies here.

The Governor contends Henry lied to the Board at her 2009 hearing about the 2008 counseling chrono, specifically that she lied about having successfully appealed that chrono to have it removed from her file. The 2008 incident arose when Henry retrieved ice, not for herself, but for some of the volunteer ministers at the prison after having been told by a supervisor she could not do so. Henry testified she was wrong for having done so, but that she had misunderstood in part what her supervisor had said. A report noted in her 2009 Life Prisoner Evaluation by Correctional Counselor S. Warren supports Henry's position. It states that although the supervisor who had written up the chrono apparently felt Henry had been "manipulative," "the ice was not for [Henry's] personal use. Ms. Henry was in charge of getting ice for the Volunteer Ministers, and had written authorization to do so. It appears that this was a misunderstanding and not manipulation."

Two separate counseling chronos were placed in Henry's file regarding that one incident. Shortly before the 2009 parole hearing, Henry's internal appeal of the 2008 chrono was partially granted in her favor, resulting in one of the two chronos pertaining to that incident being removed from her file. However, the other chrono for the incident remained in her file, and therefore the Governor contends she lied to the Board about her appeal having been successful in removing the incident from her prison record. The testimony at the hearing in this regard is brief and does not support the finding that Henry lied to the Board. In any event, there is no correlation between this incident and any propensity for dangerousness.

The Governor also concluded that Henry has "repeatedly" required counseling in order to maintain good work performance. Nothing in the record supports this conclusion, and, in the briefing before this court, the Governor has admitted this was error.

3. Insight into Substance Abuse Problem

The Governor also contends Henry lacks the requisite insight into her substance abuse problem and the difficulties presented by maintaining sobriety upon release. No reasonable inference supports any conclusion but that Henry takes her sobriety seriously. She testified before the Board in 2009 that "you have to understand that you're always in recovery. And even though I've been abstinent for over 20 years, I never take for granted that that can't resurface. No, no, I don't think about it . . . I don't desire to. But I never say that I'm so big headed that I'm beyond desiring a drink. You learn that in recovery. One of the things that I take away from that, among many things is that honesty, you have to always be honest about your weakness." Moreover, the record shows unanimous consensus by Henry's evaluators that she is both eager and resolute in her commitment to remaining sober. None of the individual statements plucked from Henry's lengthy testimony concerning her substance abuse problem and relied upon by the Governor to assert unsuitability supports the finding of current dangerousness.

4. Ability to Maintain Stable Relationships

The final factor identified by the Governor is that Henry has failed to develop the ability to maintain stable relationships. The Governor recounts Henry's lack of contact with family members, while acknowledging the record shows substantial support from correctional staff and a network of friends. A "stable social history" is one of the regulatory suitability factors but it is *not* limited to familial relationships. To the contrary, a positive factor in favor of parole is an inmate's demonstrated ability to maintain "reasonably stable relationships *with others*." (Cal. Code Regs., tit. 15, § 2402, subd. (d), italics added.)

At the 2009 hearing, Henry testified she does not keep in touch with her three siblings, as they were never close, growing up as they did in different states for most of

their lives. Their mother was incarcerated while she was young and Henry was largely raised by her grandparents, now deceased, with whom she described having a "very good" relationship. Henry's father is deceased, as is her first husband who passed away in 1986 while she was in custody awaiting trial.

Henry then married twice while incarcerated. The second marriage ended amicably after Henry realized she had married just out of the loneliness occasioned by her imprisonment. The third marriage was to a longtime friend and lasted almost a decade, until her spouse asked for a divorce because of the uncertainty of when or if Henry might be released. Henry testified she felt these experiences were positive for her and allowed her to realize she was happy just trying to become a better person on her own and to find ways to give back to others, sharing her experience with other inmates.

Despite a lack of significant familial ties at present, the record is undisputed that Henry has developed and maintained over many years an extended "church family" who visit and correspond with her regularly. She maintains contact with her adult son and daughter through her church family. Her children no longer personally visit at the prison as they decided the visits were too stressful and upsetting in the prison environment. Henry has developed and maintained many nonfamilial relationships, and many of her friends presented letters of support for her release. The Governor's decision provides no rational basis for finding Henry's lack of contact with her family demonstrates she is currently dangerous.

5. Suitability Factors

The balance of the record contains ample evidence of other factors establishing Henry's suitability for parole, some of which were acknowledged by the Governor but were not considered dispositive, and which solidly support our conclusion the Governor's decision "is not supported by some evidence." (*Lawrence*, *supra*, 44 Cal.4th at pp. 1226, 1227 [finding governor's reliance on outdated psychological evaluations, testimony taken out of context, and recitation of bare facts of commitment offense with no rational nexus to current dangerousness insufficient to show "some evidence" of unsuitability where full record contained abundant, undisputed evidence of rehabilitation].)

Henry has no juvenile record and no adult convictions, other than for the commitment offense. She has never had any diagnosis of mental illness or related disorders. Within a year of her incarceration, Henry's custody status was reduced to Medium A and she has remained housed in that capacity since that time. Henry has numerous laudatory comments in her file from correctional officers and volunteers who work at the prison. She has regularly and successfully participated in AA, NA, Al-Anon, anger management courses and similar therapeutic and self-improvement programs at the prison designed to facilitate her re-entry into society and maintain sobriety. She has obtained numerous degrees and marketable vocational skills and is presently working on a master's degree. She participates and organizes numerous groups at the prison including a choir and other programs designed to help inmates learn new skills and be productive. By all accounts, she has an exemplary postconviction record, highlighted by personal growth, rehabilitation and a devotion to community service. The deputy district attorney who appeared at Henry's 2009 parole hearing stated he did not have "strong opposition to a finding of suitability for [Henry] because of what she has accomplished in prison."

In addition, Henry has solid parole plans, described by the 2009 forensic evaluator, as "both feasible and comprehensive. [Henry] has accounted for her residential, employment, healthcare, and ongoing substance abuse relapse prevention needs. Her initiative to pursue a variety of both residential and employment options confirmed her abilities to be thorough and proactive. . . . It is also helpful that she has the reported support of her large church community in Corona, California."

It was also reported that Henry had numerous protective factors against recidivism, including "the absence of arrests prior to the age of 16; her current employment status; her excellent work performance evaluations; her ability to interact well with supervisors; the presence of support from her church family; her recent participation in an organized activity and productive use of her time; the lack of a current alcohol or drug problem; her positive attitude regarding the conventions of society; her

positive outlook regarding future supervision/treatment; and her lack of an antisocial mindset or a generalized pattern of trouble."

We conclude the Governor's decision fails to articulate how Henry presents a *current* threat to public safety if released. The Governor's decision provides nothing more than "rote recitation" of unsuitability factors and evidentiary inferences that are unreasonable as a matter of law when the full record before the Board is considered. We therefore affirm the trial court's reversal of the Governor's decision.

DISPOSITION

The September 30, 2010 order of the trial court granting Henry's petition for a writ of habeas corpus, vacating the Governor's decision of July 16, 2009, and reinstating the Board's February 19, 2009 finding Henry suitable for parole, is affirmed. The order of this court imposing a stay of the trial court's September 30, 2010 order is lifted. In the interests of justice, this opinion is made final as to this court immediately upon its filing. (*In re Masoner*, *supra*, 179 Cal.App.4th at p. 1541.)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

We concur:

BIGELOW, P. J.

RUBIN, J.